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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by France Libertes: Fondation Danielle Mitterrand, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Large dams and violations of indigenous peoples' rights in the Brazilian Amazon: Access to Justice and Suspension of Legal Decisions (Suspensão de Segurança)*

On February 14, 2014, France Libertes: Fondation Danielle Mitterrand and partner organizations submitted a joint statement to the United Nations Human Rights Council concerning systematic violations of indigenous and tribal peoples' rights in the planning, licensing and construction of large hydroelectric dams in the Amazon region[1]. In this statement, it was argued that violations of human rights, including the right to Free, Prior and Informed Consultation and Consent (FPIC) have not only continued unabated, but intensified, together with their devastating human and environmental consequences, as exemplified by the Belo Monte Hydroelectric Complex on the Xingu River and the proposed construction of 24 large dams and over 80 small and medium hydroprojects in the neighboring Tapajos basin, in the heart of the Amazon basin.

As a complementary initiative to the joint statement, a side-event entitled "Indigenous peoples' right to consultation on large dam projects in Brazil" was held on March 10th, 2014 at the 25th United Nations Human Rights Council. The speakers at the event included the national coordinator of Brazil's national-level Articulation of Indigenous Peoples (APIB), Sônia Guajajara and Alexandre Andrade Sampaio, a Brazilian lawyer with the Interamerican Association for Environmental Defense (AIDA)[2].

Both the joint statement and presentations at the side-event focused on problems surrounding a legal artifice known as "Security Suspension" (*Suspensão de Segurança*) that allows chief justices, upon request from the federal government, to indefinitely suspend court decisions in favor of indigenous peoples' rights and requirements concerning compliance with environmental legislation, based on supposed threats to national security and the country's "social and economic order". Among the most egregious use of this legal artifice, originally created during Brazil's military dictatorship, is the suspension of court decisions on the illegality of large hydroelectric dam projects, such as Belo Monte and the Tapajós dams, where the federal government has failed to ensure indigenous peoples' right to prior consultations, as enshrined in the Brazilian constitution. According to current legislation, "security suspensions" remain in effect until the last possible phase of appeal (*transito em julgado*), allowing the continuation of dam construction and situations of a *fait accompli*, while gross violations of human rights and their tragic consequences are ignored.

In the joint statement and presentations at the March 2014 side-event, it was demonstrated that the "Security Suspension" constitutes an obstacle to Brazil's compliance with the International Covenant on Civil and Political Rights (ICCPR), especially articles 2.3 (right to effective recourse) and 14 (right to justice), as well as international agreements concerning the right to free, prior, and informed consultation and consent (FPIC), including Convention 169 of the International Labor Organization (ILO), ratified by the Brazilian Congress in 2002, and the 2007 UN Declaration on Rights of Indigenous Peoples (UNDRIP).

Moreover, the current use of the "*Suspensão de Segurança*" in cases such as the Belo Monte and Tapajós mega-dam projects in the Amazon, may be considered an emblematic case of violations of human rights to a safe, clean, healthy and sustainable environment (with special attention to the needs of populations that are especially vulnerable, including indigenous peoples) as outlined in the preliminary report by Independent Expert John H. Knox, discussed at the March 2014 meeting of the UNHRC.[3]

Complementing the above-mentioned joint statement submitted by France Libertes: Fondation Danielle Mitterrand and partner organizations in February 2014, the following information has subsequently become available that we respectfully submit for consideration by the Secretary General, Special Rapporteurs and the Independent Expert on the human rights-environmental nexus:

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[1] A/HRC/25/NGO/43, http://www.internationalrivers.org/files/attached-files/bresil_eng.pdf

[2] http://www.internationalrivers.org/node/8251

[3] http://www.ohchr.org/EN/NewsEvents/Pages/AhealthyandsustainableenvironmentneededtoprotecthumanrightS.aspx

1. On March 28th 2014, the Inter-American Commission on Human Rights (IACHR) held a special hearing in Washington, D.C. on the theme of *access to justice and suspension of legal decisions*, focusing on the use of the "Suspensão de Segurança", including case studies of the Tapajós dams and other mega-projects in Brazil. Speakers at the IACHR hearing included, among others, Mr. Josias Munduruku, indigenous leader from the Tapajós region and Célia Bernardes, a Federal judge speaking on behalf of the Brazilian Association of Judges for Democracy.[4] A written statement including an in-depth analysis of the "Suspensão de Segurança", with special attention to violations of the Inter-American Human Rights System, was presented by the following civil society organizations: Justiça Global, Justiça nos Trilhos, Sociedade Paraense de Defesa dos Direitos Humanos (SDDH), Associacion Inter-Americana de Defensa Ambiental (AIDA), International Rivers, Instituto Socioambiental (ISA) and Conselho Indigenista Missionário (CIMI).
   The statement is available at the following link: http://www.internationalrivers.org/files/attached-files/cidh_suspensao_seguranca_28mar2014.pdf

2. In April 2014, the National Council of Justice (CNJ) and the Federal Public Prosecutor's Office (Ministerio Publico Federal, MPF) organized an international seminar to evaluate experiences in implementation of ILO Convention 169 in Latin America.[5] The seminar included a presentation by Dr. Antônio Souza Prudente, Distinguished Professor of Environmental Law at the Catholic University of Brasilia and Federal Judge at a Regional Appeals Court (TRF-1). The presentation and accompanying text are entitled "*A Suspensão de Segurança como Instrumento Agressor aos Tratados e Convenções Internacionais sobre Direitos Humanos*" (Security Suspension as an Instrument of Aggression towards International Treaties and Conventions on Human Rights).
   The text is available at the following link: http://www.icjp.pt/sites/default/files/papers/palestra_-_evento_da_procuradoria_-_a_suspensao_de_seguranca_-_texto_jorge_miranda.pdf [6]

Given the above consideration, our organizations respectfully reiterate our appeal of March 2014 to the Special Rapporteur on Human Rights of Indigenous Peoples, the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence, the Special Rapporteur in the field of Cultural Rights, the Special Rapporteur on the Independence of Judges and Lawyers and the Independent Expert on Minority Issues:

- to investigate how the utilization of the "Security Suspension" (*Suspensão de Segurança*) by the Brazilian government and chief justices in lawsuits concerning large dams and other proposed mega-projects constitutes an impediment to compliance with international agreements concerning human rights, including the right to FPIC among indigenous peoples and other traditional populations, as determined by ILO Convention 169, the Inter-American Human Rights System and UNDRIP. With support from independent Brazilian and international experts, investigations should include field visits to interview affected communities, leaders of social movements, NGOs, federal public prosecutors (MPF) and other legal experts, including federal judges whose decisions have been systematically overturned, among others.
- to organize a special event to discuss this urgent issue, including conclusions and recommendations of investigations by special rapporteurs and experts, with participation of key parties (e.g. indigenous and tribal leaders, social movements, NGOs, MPF, AGU/PR, federal judges and independent legal experts).

We also respectfully request that the UNHRC coordinate with the Inter-American Commission on Human Rights (IACHR) and the International Labor Organization (ILO) in carrying out these activities.

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* International Rivers NGO(s) without consultative status, also share the views expressed in this statement.

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[4] http://www.internationalrivers.org/node/8278

[5] http://www.cnj.jus.br/evento/eventos-novos/seminario-internacional-10-anos-da-convencao-169-da-oit

[6] A video recording of the presentation by Dr. Souza Prudente at the international seminar may be viewed at the following link: https://www.youtube.com/watch?v=zeCerJ0sGTA The presentation begins at 5:16:50.